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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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AMBER A. FOSTER,

Plaintiff,

v.

STATE OF NEVADA, et al.,

Defendants.

Case No. 2:19-cv-00548-GMN-CWH

ORDER

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. On April 5, 2019, this Court issued an order directing Plaintiff to file a fully complete application to proceed *in forma pauperis*, including the required financial documents, or pay the full filing fee of \$400.00 within thirty (30) days from the date of that order. (ECF No. 3 at 2). The thirty-day period has now expired, and Plaintiff has not filed an application to proceed *in forma pauperis*, paid the full filing fee, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance

1 with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal
2 for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856
3 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring
4 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833
5 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*
6 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and
7 failure to comply with local rules).

8 In determining whether to dismiss an action for lack of prosecution, failure to obey
9 a court order, or failure to comply with local rules, the court must consider several factors:
10 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
11 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
12 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
13 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
14 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.


15 In the instant case, the Court finds that the first two factors, the public's interest in
16 expeditiously resolving this litigation and the Court's interest in managing the docket,
17 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
18 in favor of dismissal, since a presumption of injury arises from the occurrence of
19 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See
20 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy
21 favoring disposition of cases on their merits – is greatly outweighed by the factors in favor
22 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
23 the court's order will result in dismissal satisfies the "consideration of alternatives"
24 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
25 F.2d at 1424. The Court's order requiring Plaintiff to file an application to proceed *in forma*
26 *pauperis* or pay the full filing fee within thirty (30) days expressly stated: "IT IS FURTHER
27 ORDERED that failure to comply with this order may result in a recommendation that the
28 case be dismissed without prejudice." (ECF No. 3 at 2). Thus, Plaintiff had adequate

1 warning that dismissal would result from his noncompliance with the Court's order to file
2 an application to proceed *in forma pauperis* or pay the full filing fee within thirty (30) days.

3 It is therefore ordered that this action is dismissed without prejudice based on
4 Plaintiff's failure to file a complete application to proceed *in forma pauperis* or pay the full
5 filing fee in compliance with this Court's April 5, 2019 order.

6 It is further ordered that the Clerk of Court shall enter judgment accordingly.

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8 DATED THIS 15 day of May 2019.

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UNITED STATES DISTRICT JUDGE
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